

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 105 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

=====

AJITSINH @ ANIL RAMNATH POPATI

Versus

STATE OF GUJARAT

Appearance:

MR DIPAK R DAVE for Petitioner

Mr.S.A.Pandya, LAPP for Respondent No. 1

SERVED for Respondent No. 2

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 03/07/97

ORAL JUDGEMENT

For offence under Sections 363, 366 and 376, the present petitioner came to be convicted by the learned 2nd Extra Assistant Judge in Sessions Case No.114 of 1994 and that conviction came to be confirmed in Criminal Appeal No.18 of 1995 by the learned Additional Sessions Judge of Panchmahal at Godhra on 29-1-1997. Under the circumstances, what is convassed before this Court by way of this application is about the quantum of sentence. The submission made by the learned Advocate Mr.Deepak Dave is that the sentence imposed namely 5 years R.I. for the main offence under Sec.376 is much too high looking to the facts and circumstances of the case.

2. Minor Jankhana, aged about 14 years or so, is said to be the victim of the crime. The case sought to be made out is that she is above the age of 15 years and even if, she is considered to be below the consenting age, as held by both the Courts below, her consent is established by the evidence led by the prosecution itself

and under the circumstances, the learned Judges below should have been more lenient than they have been with the petitioner.

3. The petitioner is in Jail from 7-4-1994 till today. Under the circumstances, even if sentence of 5 years' RI was awarded to him, substantial part of it would have been exhausted allowing for the usual period of remission, credit etc.

4. The request is that the petitioner be let off with whatever sentence that he has undergone so far. The medical evidence clearly indicates that the girl was habituated to sexual intercourse, and they stayed together for about 25 days. Though the Investigating Officer had requested for Oscification test neither Doctor of Godhra Civil Hospital nor the Primary Health Centre has bothered to carry out the test and the age is determined only on the basis of the evidence as to the birth date recorded in the school leaving certificate, followed by the birth certificate produced from the Register of Birth and Death kept by the authority. It could have been a case of giving benefit of doubt, had the matter been properly pursued before the trial Court. In this background, the request made on behalf of the petitioner that whatever period that he has undergone be considered to be enough seems to be quite reasonable and I accept the same.

5. The petition stands allowed accordingly. The order of conviction remains as it is. The order of sentence stands modified to the effect that whatever sentence he has undergone in the jail is considered to be enough. The petitioner is ordered to be set at liberty forthwith, if not required for any other purpose. Rule is made absolute.
